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PATENT

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DATE: August 3, 2006

NAME: L. McCafferty

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant:	Birli, et al
Application No.:	10/823,961
Filing Date:	April 14, 2004
Title:	THREADED ROD HANGER
Examiner:	Wujciak, A.J.
Art Unit:	3632
Attorney Docket No.	ERIC.P0347US

Mail Stop Appeal Brief Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action dated July 6, 2006 is applicant's Amended Appeal Brief for the above-identified application.

AMENDED APPEAL BRIEF

Introduction

This is an appeal from the final rejection of claims 1, 5-13, and 17-24. This brief is submitted in triplicate.

I. Real Party in Interest

The real party in interest is ERICO International Corporation, the assignee and owner of this application.

II. Related Appeals and Interferences

There are no related appeals or interferences.

III. Status of Claims

No claims are allowed or allowable. Claims 1, 5-13 and 17-24 are rejected and are set forth in the attached **CLAIM APPENDIX**. Claims 2-4 and 14-16 are cancelled.

IV. Status of Amendments

There are no pending amendments. However an amendment after Final Rejection was filed reducing the number of claims to those on appeal. By such amendment, claims 2-4 were swept into their parent claims. Original claim 4 is now claim 1, and original claims 1-3 are not part of the appeal. The same is true with claims 14-16 having been swept into claim 13, so that original claims 13-15 are not part of this appeal and original claim 16 is now claim 13.

Also included with the noted amendment was a Rule 132 Declaration by the Inventor including digital photographs of a commercial embodiment of the invention, and a Chinese copy (literally) which has been encountered by the real party in interest.

It is assumed the amendment will be entered for appeal purposes although the Examiner's advisory action indicates nothing. A copy of the Declaration is attached as **EVIDENCE APPENDIX**.

V. Summary of Claimed Subject Matter

This invention pertains to rod hangers in the form of a clamp or clip which includes a body or housing and which is secured to a building structure. The body or housing in one form includes a jaw opening adapted to clamp to a projecting edge structure such as a beam flange with a clamp screw. In other forms the body or housing is formed with a drive-on, hammer-on, or pull-on clips for attachment to a purlin or flange edge, for example. In each case the beam, purlin or flange edge is the structure from which the threaded rod is to be supported or hung. The flange clamp embodiment is shown in Figures 1-4 while the drive-on, hammer-on, or pull-on embodiments are shown in Figures 5, 6, and 7, each having a variation of a clip to accommodate a Z-purlin, C-purlin or a horizontal flange edge. A Z-purlin has an angled open edge while a C-purlin has a vertical open edge.

The body of the flange clamp embodiment is shown more particularly in the sectional view of Figure 4 which is taken horizontally from the rear elevation, Figure 2. The body is formed of sheet metal and has side walls 24 and 26 and a rear wall 32. Shown in the elevations are top and bottom walls

28 and 30. One edge of each of the side walls is provided with a notch 34, 36 which forms the jaw opening.

The housing forms arms above and below the notches in the form of open ended channels formed by the side walls and top, and the side walls and bottom, respectively. A clamp screw is threaded in thread-form 42 in the top wall 28 and by tightening the clamp screw down on the flange 22 (structure) the clamp hanger is firmly secured to the structure (page 4, lines 1-19).

When clamped, most of the body extends beyond the projecting edge 44 of the flange (structure), and forms a housing for receiving vertically extending threaded rod 48. To facilitate receipt and movement of the rod, the top and bottom walls are provided with clearance holes 50 and 52, respectively (Page 4, 20-24).

The side walls of the projecting housing portion 46 are each provided with a pair of vertically extending parallel slots. The slots are seen at 54,56, 58 and 60 and they are parallel to the axis of the threaded rod and symmetrical about such axis (Page 4, lines 25-29).

The slots are designed to receive the legs 68 and 70 of U-shape spring clip 64. Each leg has thread form ridges shown at 73 and 74 which are offset one half the pitch of the threads of the rod (Page 5, lines 7 and 8). To ease the insertion of the clip and to hold the legs in place, the housing body is provided with angled back-up guide arms 84 and 86. The longer angled arm 84 includes a bent tip 88. The shorter arm is struck from the wall 32 at an acute angle and includes a tip 90. The back-up guide arms assist in the insertion of the clip and keep the clip legs in place once inserted. The exterior of the clip legs are provided with cam strikes 80 and 82 seen in Figure 4 which snap

behind the outside edges of the slots 58 and 60 in the opposite side wall 26. To remove the clip the projecting tips 76 and 78 are pressed together.

The rod housing portion of the embodiments of Figures 5-7 shown at 92 for each is essentially the same. In each the far wall extends up and the top of the wall is provided with the illustrated Z-purlin, C-purlin or horizontal flange clip. In the three embodiments, the edge clip is either angled (Figure 5), parallel (Figure 6), or perpendicular (Figure 7) to the extension of the housing.

It is important to understand how the embodiments work. The hanger is affixed to the structure and the threaded rod is inserted through the clearance holes. The U-shape clip is then inserted and final height adjustment is made by rotating the rod (Page 8, lines 4 and 5). The only thing inserted laterally on the rod is the U shape clip. The clamp or hanger cannot be inserted literally on the rod, nor can the rod be inserted into the clamp or hanger laterally.

VI. Grounds of Rejection to be Reviewed on Appeal

The only grounds of rejection in this Appeal is that claims 1, 5-13, and 17-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Havener (U.S. Patent No. 3,341,909) in view of Kies et al. al. (U.S. Patent No. 6,050,766).

VII. Argument

The Examiner has rejected all of applicants claims as unpatentable over Havener in view of Kies. The rejection is without discrimination both as to applicants claims, and as to the references as a whole, and as to the fact that they are selected from non-analogous arts.

In the final rejection on page 2 the Examiner generally correctly describes Figure 11 of Havener, although one might argue that the nut 72 and washer 73 are not included in the threaded rod receiving portion, but rather on it. In any event, the description of Figure 11 of Havener occupies but a small paragraph beginning at column 3, line 48. The Examiner also generally correctly describes Kies.

What the Examiner does not describe is how Kies operates and that the housing of Kies is U-shape with an open side so it can be fitted on the rod laterally, and that once the clip is inserted laterally on the rod it is locked on the rod.

Havener cannot operate that way since the rod is inserted vertically through hole 41 (see Figures 4 and 5), and then the washer and nut are put on.

The Examiner's conclusion is set forth on page 3 of the final rejection, namely "...to reduce time for tightening the threaded rod with clip rather than spending some time to tighten the nut on the threaded rod".

That of course is easy to say in hindsight if you combine broad concepts and ignore the realities of how the references operate and that they are from non-analogous arts.

The Examiner really gets lost in the two references when rejecting claims 9-12 and 21-24.

The Examiner's rejection of such claims is as follows:

"In regard to claims 9-12 and 21-24, Havener in view of Kies et al. teaches all elements above but fails to teach the housing includes an extension, however in figure 7

of Havener which is a different embodiment shows that the housing includes an extension (50-52) terminating in an edge clip (53, wall between 53 and 54, and 54). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used the extension to figure 11 of Havener's invention to provide additional storage for an object to be secured therein."

It is almost as though Figure 7 of Havener is a tertiary reference, but Havener's Figure 7 shows a snap clip for a pipe or conduit 59 supported below the clamp still clamped to the structure S above, and no threaded rod. And what does additional storage have to do with the claimed extension terminating in an edge clip, or the angle of that clip with regard to the extension. The rejection simply does not seem to be directed to the claims on Appeal.

For resolution of obviousness under 35 UCS 103, the law presumes full knowledge by the hypothetical worker having ordinary skill in the art of all the prior art in the inventor's field of endeavor. With regard to prior art outside the inventor's field of endeavor, knowledge is presumed only as to those arts reasonably pertinent to the particular problem with which the inventor was involved. See *In re Clay*, 966 F.2d 656, 23 USPQ 2d 1058 (Fed. Cir. 1992), *In re Wood*, 599 F.2d 1032, 202 USPQ 171 (CCPA 1979), *In re Antle*, 444 F.2d 1168, 170 USPQ 285 (CCPA 1971). Following *Clay* and *Wood*, the determination that a reference is from a non-analogous art is twofold. First, it must be decided if the reference is from within the inventor's field of endeavor. If it is not, then it must be determined whether the reference is reasonably pertinent to the particular problem involved.

More recently, the Court of Appeals for the Federal Circuit in *In re Oetiker*, 24 USPQ 2d 1443 at 1446 (1992)...

We have reminded ourselves and the PTO that it is necessary to consider "the reality of the circumstances", *In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979) -- in other words, common sense -- in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor.

It has not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments. The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness. There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge can not come from the applicant's invention itself. *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 678-79, 7 USPQ 2d 1315, 1318 (Fed. Cir. 1988); *In re Gieger*, 815 F.2d 686, 687, 2 USPQ 2d 1276, 1278 (Fed. Cir. 1987); *Interconnect Planning Corp. v. Feil* 774 F.2d 1132, 1147, 227 USPQ 543, 551 (Fed. Cir. 1985).

[5] Oetiker's invention is simple. Simplicity is not inimical to patentability. See *Goodyear Tire & Rubber Co. v. Ray-O-Vac Co.*, 321 U.S. 275, 279, 60 USPQ 386, 388 (1944) (simplicity of itself does not negative invention); *Panduit Corp. v. Dennison Mfg Co.*, 810 F.2d 1561, 1572, 1 USPQ 2d 1593, 1600 (Fed. Cir.) (the patent system is not foreclosed to those who make simple inventions), *cert. denied*, 481 U.S. 1052 (1987).

We conclude that the references on which the Board relied were improperly combined. Accordingly, the Board erred in

holding the claims unpatentable under section 103. The rejection of claims 1-4 and 16-21 is

REVERSED.

The above case is mentioned twice in the MPEP in Section 2141.01(a) on pages 2100-92 and is the lead case under the section on *ANALOGY in THE MECHANICAL ARTS*.

The preceding section in the *Manual* refers to classification as some evidence of analogy. Of course the opposite is also true. Classification is pertinent to the lack of analogy.

It is of course noted that Havener is classified in class 24-243 while Kies is classified in class 411. A review of the search notes for both such classes reveals no directive to the other class. The only mention of class 24 in the search notes of class 411 is a negative reference which begins Section II namely:

SECTION II - LINES WITH OTHER CLASSES AND WITHIN THIS CLASS

If otherwise proper for this class, fasteners capable of either manual or tool operation (e.g., tacks) are placed in this class **and not** in Class 24.

It is noted that the appearance of “and not” in boldface is the way it appears in the notes when downloaded.

It is also noted that the Examiner cites and relies on *In re Oetiker* in the final rejection but it can be seen from the above that Oetiker holds that simplicity does not negative invention, and more importantly that fastening a hose clamp, and a garment fastener were non-analogous, and that the

combination (reconstruction) only with the benefit of hindsight is insufficient to present a prima facie case of obviousness.

Also it should be noted that it was applicant that brought the Kies reference to the attention of the Office and applicant should not be penalized as a result. This, does not make non-analogous art analogous.

The Examiner has also in his hindsight reconstruction not considered the two totally different functions of the references nor the wide time diversity (three and a half decades) between the references. Kies is a slip-on nut and comes from a slip-on nut or fastener class. The only nut Havener shows is nut 73 and it operates like any other nut. In Kies, the housing with the insert clip out is placed laterally on the rod and only then is the clip inserted. Neither Havener nor applicant can operate that way. It isn't physically possible.

Also, in *In re Kotzab*, 55 USPQ2d 1313 (Fed. Cir. 2000), the Federal Circuit re-iterated the critical need, in an obviousness rejection, for a showing of motivation, suggestion or teaching to combine references:

A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. *See Dembiczak*, 175 F.3d at 999, 50 USPQ2d at 1617. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of hindsight syndrome wherein that which only the invention taught is used against its teacher." *Id.* (Quoting *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983)).

Most if not all inventions arise from a combination of old elements. See *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998). Thus, every element of a claimed invention may often be found in the prior art. See *id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. See *id.* Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant. See *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984)....

The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved. See *Dembiczak*, 175 F.3d at 999, 50 USPQ2s at 1617. In addition, the teaching, motivation or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. See *WMS Gaming, Inc. V. International Game Tech*, 184 F.3d 1339, 1355, 51 USPQ2d 1385, 1397 (Fed. Cir. 1999). The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981)(and cases cited therein).

It is submitted that the present rejection is an example of the sort of “hindsight syndrome” the Federal Circuit warned against, in that the present invention is being used as a blueprint for the proposed combination of

principal or concepts from Havener and Kies - there is no teaching or suggestion in Havener or Kies for the proposed combination, nor has any other source been identified motivating the proposed combination.

All of this more than amply illustrates the selective reconstruction of the prior art with no other purpose than to reject applicants claims.

Claims 1, 5-13 and 17-24 are submitted as patentable over Havener and Kies combined.

Also, with reference to **the EVIDENCE APPENDIX** it is noted that a commercial form of the invention has had commercial success, and that it has been slavishly copied. As the Declaration notes, other than the markings and finish, the parts illustrated in the Declaration are indistinguishable.

The copyist didn't copy Havener, nor Kies, but rather Applicant's invention. As the old saw goes: A sincere form of flattery.

The Declaration **of the EVIDENCE APPENDIX** presents evidence of unobviousness.

Turning now to the claims it will be seen that claim 1 recites a rod hanger adapted to be secured to a building structure. Once the rod hanger is secured to the structure it is fixed and certainly as fixed as the structure. Claim 1 goes on to recite the rod receiving portion and defines it in some considerable detail, none of which is found in Havener, nor are they found in Kies.

Kies, for example, does not show slots in opposite side walls of a housing. The slots seen in Figure 3 are only in one side wall and the opposite side wall 38 seen in Figure 6 has no slots. The clip tips abut the inside of the

wall 38. Also, Kies has no angled projections in the housing which guide the tips of the legs from one set of slots to the non-existent other set of slots.

The Examiner, as noted, is loosely applying a non-analogous concept without regard to claim language.

Claim 5 sets forth that the angled projections engage and back-up the legs to hold the thread forms against the rod. Again, nothing is found in Havener or Kies to suggest this. Back-up angled projections in Kies would prevent the housing from being inserted on the rod laterally, and this then would make Kies inoperative for its intended purpose. There is of course a whole line of cases which indicates modifications making a reference inoperative are not obvious.

The authorities on the subject of whether it would be obvious to destroy or render inoperative a prior device are pretty straight forward.

In *In re Schulpen*, the CCPA indicated:

Rather than being made obvious by the reference, such modification would run counter to its teaching by rendering the apparatus inoperative to produce the disclosed tire patches. *In re Schulpen* 157 USPQ 52, 55, (CCPA 1968).

In *Ex Parte Hartmann*, 186 USPQ 366 at 367, (1974) the PTOBA held that references cannot properly be combined if the effect would destroy the invention on which one of the reference patents is based. These decisions by the CCPA and Board of Appeals were precursors of the well known decision by

the Federal Circuit found in *In re Gordon* 221 USPQ 1125, 1127 (Fed. Cir. 1984), involving the inoperative up-side-down oil filter.

This Federal Circuit decision is perhaps best summarized in footnote 12 found in the subsequent recent case of *In re Fritch* 23 USPQ 2d 1780, at 1783 (Fed. Cir. 1992). Such footnote states:

¹²This court has previously found a proposed modification inappropriate for an obviousness inquiry when the modification rendered the prior art reference inoperable for its intended purpose. *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

In addition to *In re Fritch*, *Gordon* has been followed in *In re Kramer* 18 USPQ 2d 1415, 1416 (Fed. Cir. 1991 unpub.), *In re Chu* 36 USPQ 2d 1089, 1094 (Fed. Cir. 1995), and in *Bausch & Lomb Inc. v. Barnes-Hind/Hydrocurve Inc.* 10 USPQ 2d 1929, 1934 (N.D. Calif. 1989).

i. Claim 6

Claim 6 sets forth that the tips project through the slots when fully inserted. As can be seen from Figure 6 of Kies there are no slots and no projection through the non-existent slots.

ii. Claim 7

Claim 7 recites the projections on the outside of the spring legs to snap behind the slots in the wall. While Kies shows projections, there are no slots in wall 38, and a comparison of Figure 6 of Kies and Applicant's Figure 4 is readily invited.

iii. Claim 8

Claim 8 sets forth the housing features relating to the notches forming the jaw as well as the clamp screw. Again no such structure is shown in Kies, and the addition of Kies to Havener can't reconstruct claims 1 and 8.

iv. Claims 9-12

Claims 9-12 as discussed above set forth the housing as including an extension and terminating in an edge clip, with claims 10-12 reciting the angled, parallel, and perpendicular relationship of the clip to the extension.

Again, the add-on conduit clip of Figure 7 isn't part of the housing and isn't responsive to any of these claims. Figure 7 of Havener has no rod and is still clamped to the structure.

v. Claim 13

Independent claim 13, like claim 1, has parallel slots in opposite side walls and there are no slots in wall 38 of Kies. Also, the angled projections don't exist in Kies, and if they did they would make Kies inoperative.

vi. Claims 17-24

The same comments with regard to claims 5-12 may be repeated with regard to dependent claims 17-24 since the features are not found in Kies, nor in Figure 7 of Havener.

In conclusion, an analysis of the claims reveals that the Examiner has ignored the claim language and selected concepts from unrelated and non-analogous art to reject Applicant's claims, all purely in hindsight. Even Figures 7 and 11 of Havener are unrelated, not only to each other, but also to Applicant's claims.

Conclusion

It is believed apparent that the claims on appeal are not obvious in view of the art applied. The indiscriminate shotgun rejection should be reversed and the application allowed.

VIII. CLAIMS APPENDIX

Attached hereto.

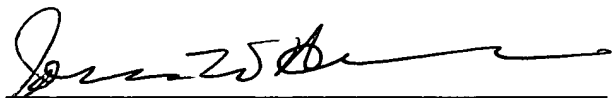
IX. EVIDENCE APPENDIX

An Evidence Appendix is attached. The Evidence Appendix contains a copy of the Rule 132 Declaration filed on October 13, 2005 as well as Exhibits A-H originally submitted with the Rule 132 Declaration.

X. RELATED PROCEEDINGS APPENDIX

A Related Proceedings Appendix is attached but identifies no proceedings.

Respectfully submitted,
RENNER, OTTO, BOISSELLE & SKLAR, L.L.P.

By: 

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IX. CLAIMS APPENDIX

1. (Rejected) A rod hanger comprising a body adapted to be secured to a building structure and including a threaded rod receiving portion accommodating a vertically extending threaded rod therethrough generally clear of the building structure, and an insert clip in said rod receiving portion gripping the threaded rod to secure it in vertical position, said rod receiving portion comprising a sheet metal housing with slots in opposite side walls generally parallel to the rod to receive the insert clip, said insert clip being U-shape and having parallel spring legs each having a linear series of grooves forming a thread profile, the profiles in the respective legs of being offset by one half the pitch of threads of the rod, and angled projections in said housing to guide the tips of the legs from one set of slots to the other .

2-4 (Cancelled)

5. (Rejected) A rod hanger as set forth in claim 1 wherein said angled projections engage and back up said legs to hold the thread forms against the rod.

6. (Rejected) A rod hanger as set forth in claim 5 wherein the tips of the legs project through the slots of one wall when the insert clip is fully inserted in the slots of the other.

7. (Rejected) A rod hanger as set forth in claim 6 including projections on the outsides of said spring legs adapted to snap behind the slots in said one wall to lock the insert clip in place.

8. (Rejected) A rod hanger as set forth in claim 1 wherein said sheet metal housing includes aligned notches to receive a beam flange, and a clamp screw to clamp the hanger to said beam flange.

9. (Rejected) A hanger as set forth in claim 1 wherein said sheet metal housing includes an extension terminating in an edge clip.

10. (Rejected) A hanger as set forth in claim 9 wherein said edge clip is angled with respect to the extension.

11. (Rejected) A hanger as set forth in claim 9 wherein said edge clip is generally parallel to said extension.

12. (Rejected) A hanger as set forth in claim 9 wherein said edge clip is generally perpendicular to said extension.

13. (Rejected) A threaded rod hanger comprising a sheet metal body having a first portion adapted to be fixed to a building structure, and a rod receiving portion offset from the first portion accommodating a threaded rod vertically therethrough clear of the structure, and an insert clip in said rod receiving portion operative to grip the threaded rod to hold it in a selected vertical position, said housing including opposite side walls generally parallel to the threaded rod, and parallel slots in said opposite side walls generally parallel to the rod to receive the insert clip, said insert clip being U-shape having parallel spring legs each having a linear series of grooves forming a thread profile, the profiles in the respective legs being offset by one half the pitch of threads of the rod, and angled projections in said housing to guide the tips of the legs from one set of slots to the other.

14-16 Cancelled

17. (Rejected) A hanger as set forth in claim 13 wherein said angled projections engage and back up said legs to hold the thread forms against the rod.

18. (Rejected) A hanger as set forth in claim 17 wherein the tips of the legs project through the slots of one wall when the insert clip is fully inserted in the slots of the other.

19. (Rejected) A hanger as set forth in claim 18 including projections on the outsides of said spring legs adapted to snap behind the slots in said one wall to lock the insert clip in place.

20. (Rejected) A hanger as set forth in claim 13 wherein said sheet metal housing includes aligned notches to receive a beam flange, and a clamp screw to clamp the hanger to said beam flange.

21. (Rejected) A hanger as set forth in claim 13 wherein said body is sheet metal housing includes an extension terminating in an edge clip.

22. (Rejected) A hanger as set forth in claim 21 wherein said edge clip is angled with respect to the extension.

23. (Rejected) A hanger as set forth in claim 21 wherein said edge clip is generally parallel to said extension.

24. (Rejected) A hanger as set forth in claim 21 wherein said edge clip is generally perpendicular to said extension.

IX. EVIDENCE APPENDIX

This Evidence Appendix contains a copy of the Rule 132 Declaration filed on October 13, 2005 as well as Exhibits A-H originally submitted with the Rule 132 Declaration.

EVIDENCE APPENDIX

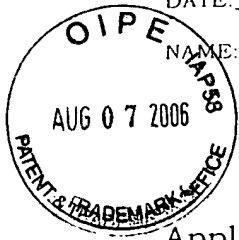
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DATE: Feb 13, 2005

NAME: T. Mc Cafferty



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Birli et al

Serial No: 10/823,961

Filing Date: April 14, 2004

Title: THREADED ROD HANGER

Group Art Unit: 3632

Examiner: Wujciak, A.J.

Applicant File No: ERIC.P0347US

**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

DECLARATION

Now comes the undersigned, Mary Ellen Birli and states as follows:

I am the inventor in the above application and am familiar with the invention, the application, and the claims.

The invention has become of commercial importance to my Employer, ERICO International Corporation (ERICO), the Assignee of the invention and above application.

The commercial form of the present invention, in addition and after achieving its commercial importance, has recently been slavishly copied by a manufacture in China and imported to this country.

Attached hereto as **Exhibits A, B, C and D** are digital photographs of ERICO's commercial product.

Also, attached hereto as **Exhibits E, F, G and H** are digital photographs of the product which is a copy of ERICO's commercial product depicted in photographs **Exhibits A, B, C and D**.

I have been advised that the product depicted in photograph **Exhibits E, F, G and H** has been manufactured in China and sold to one or more distributors in this country.

As can be seen, both products includes a sheet metal housing having side walls which are notched to form a jaw opening with a clamping screw and thread form opening positioned above the jaw opening so that a structural flange or the like may be positioned in the jaw opening and clamped against the bottom of the jaw opening by tightening the clamp screw.

The sheet metal housing behind the jaw opening includes side walls of substantial depth and the two side walls are joined by a back or end wall. The top and bottom of the housing behind the jaw opening includes openings to accommodate a threaded rod extending vertically beyond the structural flange adapted to be accommodated in the jaw opening.

As can be seen both the ERICO rod hanger and the Chinese copy have parallel vertical slots in the opposite side walls behind the jaw opening symmetrically positioned with respect to and parallel with the axis of the rod accommodating holes, and the housing of each is provided with clip guide and clip back-up arms formed as projections across the interior of the housing and struck from the back of the housing, respectively.

The product depicted in **Exhibits E, F, G and H** appears to me to be a slavish copy of the product depicted in **Exhibits A, B, C and D**.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements made jeopardize the validity of any application or proceeding.

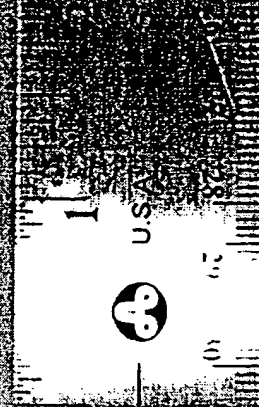
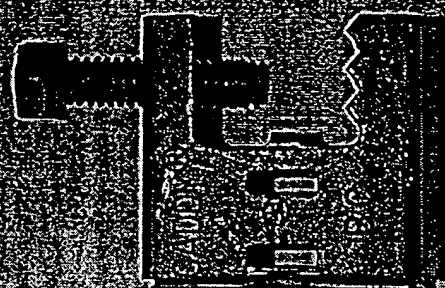
Mary Ellen Birli.
Mary Ellen Birli, Inventor

10/10/2005
Date

EXHIBIT

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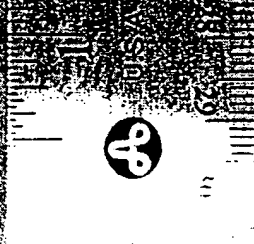
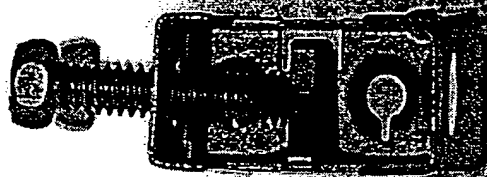
Wobler



EXHIBIT

B

Webster



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EXHIBIT

C

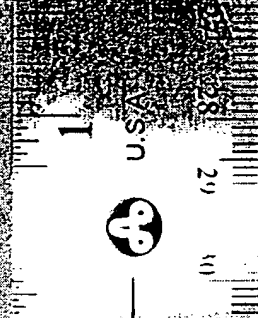
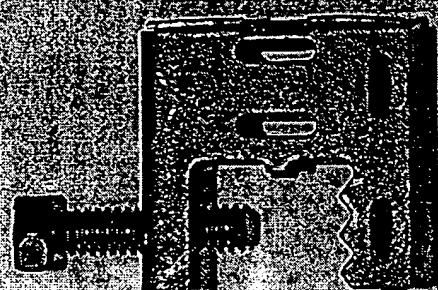
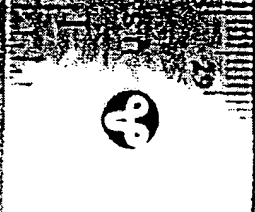
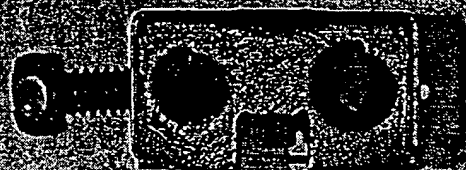


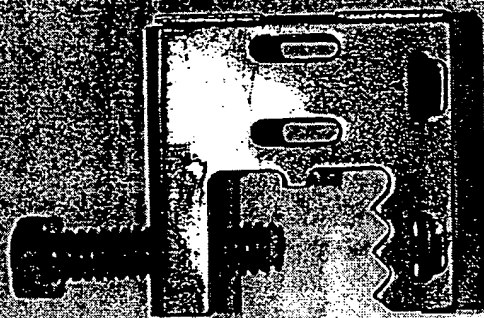
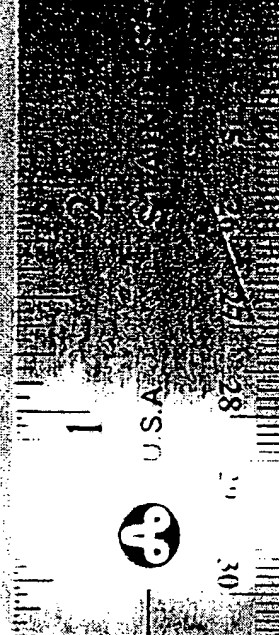
EXHIBIT
D



EXHIBIT

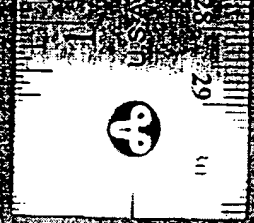
E

Wobler



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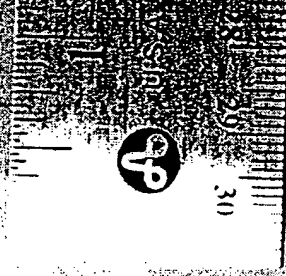
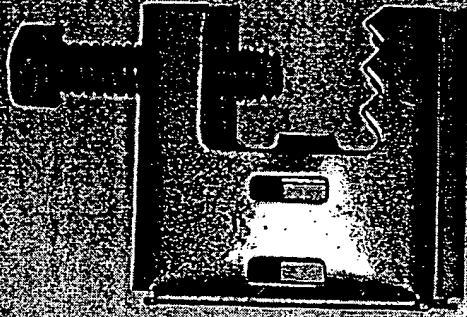
EXHIBIT
E



EXHIBIT

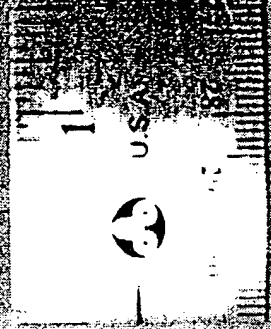
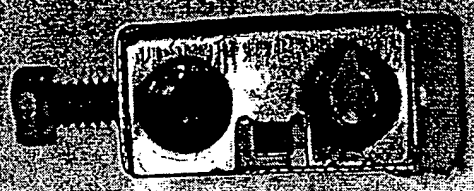
G

Labels



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EXHIBIT
H



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X. RELATED PROCEEDINGS APPENDIX

None.